# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 24683 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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**R.H.PATEL - Petitioner(s)**

**Versus**

**STATE OF GUJARAT THR' PRINCIPAL SECRETARY & 3 - Respondent(s)**

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**Appearance :**

MR PARESH UPADHYAY for the Petitioner
MS MANISHA SHAH, A.G.P. For the Respondents

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 06/03/2006**

**ORAL JUDGMENT**

1. Rule. Ms. Manisha Shah, learned Assistant Government Pleader waives service of Rule on behalf of the respondents. At the joint request of the learned

Advocates for the parties, the petition is taken up for final disposal today.

2. In the present petition, the grievance made by the petitioner is of two fold. Firstly, it is the case of the petitioner that his gratuity and other post retiral benefits were not released for long time after his retirement for no fault of his. He has, therefore, prayed for interest on the delayed payment of post retiral benefits. Second grievance of the petitioner is that according to the petitioner, the authorities have not correctly fixed his pension and gave effect to an order of penalty with permanent effect, whereas the order passed by the authorities was to withhold increment of the petitioner without future effect.

2.1 Short facts leading to the present petition are that, the petitioner while working as Labour Officer, retired with effect from 31st May, 2000 from government service having crossed the age of superannuation. At the time of his retirement, the petitioner was facing departmental inquiry pursuant to charge-sheet issued on 18.06.1999. His post retiral benefits were therefore, not finalized on account of pendency of departmental

proceedings against him. He was, therefore, paid provisional pension at the rate of Rs. 4980/- (Rupees Four Thousand Nine Hundred Eight only) by order dated 19.07.2000. The petitioner was not paid gratuity, nor was he permitted to commute his pension. Eventually, upon conclusion of the inquiry, the report was submitted by the Inquiry Officer on 12.12.2000 by which the Inquiry Officer held that the charges against the petitioner were not proved. The government had not disagreed with the findings of the Inquiry Officer, and copy of the Inquiry Officer's report was never supplied to the petitioner. Eventually, the government agreed with the findings of the Inquiry Officer and passed an order exonerating the petitioner on 27.02.2004. The pension of the petitioner was fixed finally at the rate of Rs. 4950/- per month. He was permitted to commute the pension as per rules. At this stage, it may be noted that provisional gratuity was paid to the petitioner to the tune of Rs. 2,03,521/- (Rupees Two Laks Three Thousand Five Hundred and Twenty One only) on 30.06.2003. Finally, the government found that the petitioner is required to receive gratuity total of which comes to Rs. 2,25,423/- (Rupees Two Lakhs Twenty Five Thousand Four Hundred Twenty Three only) in October, 2005. The remaining amount of gratuity which remained

unpaid, after the petitioner was paid provisional gratuity was also paid over by the government.

3. It is therefore, the case of the petitioner that the petitioner should receive interest for the delayed payment of gratuity and should also be paid interest on commuted pension of the petitioner which commutation was delayed on account of departmental inquiry.

4. So for as the fixation of the pension of the petitioner is concerned, it is the case of the petitioner that by an order dated 28.02.2000, disciplinary authority had imposed punishment withholding of one increment for a period of one year without future effect. It is the case of the petitioner that the respondents wrongly, fixed the pension of the petitioner at Rs. 4950/- per month from the date of his retirement which would have the effect of implementing the order of penalty dated 28.02.2000, as if the order is to withhold increment with future effect whereas in fact, the disciplinary authority had imposed punishment of withholding one increment without future effect.

5. So far as the question of claim of the petitioner to

receive interest on the delayed post retiral payment is concerned, following aspects need to be taken into consideration:

(1) The petitioner retired on superannuation with effect from 31.05.2000;

(2) At the time of his retirement, departmental inquiry was pending against the petitioner for which the charge-sheet was issued on 18.06.1999;

(3) The Inquiry Officer submitted his report on 12.12.2000. The Inquiry Officer found that the charges against the petitioner are not proved; and

(4) Copy of the Inquiry Officer's report was never supplied to the petitioner, since the government did not disagree with the findings of the Inquiry Officer. The government finally decided to exonerate the petitioner by order dated 27.02.2004.

6. As per the rules, provisional gratuity of the petitioner to the tune of Rs. 2,03,521 (Rupees Two Laks Three Thousand Five Hundred and Twenty One only) was released on 30.06.2003. Gratuity of the petitioner was finally fixed in October, 2005 and the differential

amount was paid over to the petitioner also some time thereabout. The pension of the petitioner was also finally fixed simultaneously, and the petitioner was permitted to commute the pension as per rules.

7. In so far as the payment of gratuity is concerned, there is considerable delay in release of the same. In no way, the petitioner can be held responsible in delay in release of the gratuity amount. Any part of blame for delay in conclusion of the inquiry against the petitioner cannot be attributed to him. In fact the Inquiry Officer's report was made available in December, 2000. Within reasonable time, the government should have taken final decision on the report submitted by the Inquiry Officer. For no fault of the petitioner, the decision of the government was delayed up to 27.02.2004.

8. On account of these circumstances, I find that the petitioner is entitled to receive interest on the gratuity amount paid to him. Considering that three months period would be reasonable for the government to finalise the amount of gratuity to be paid after the retirement of the government servant, I find that the petitioner should receive interest beyond the said period till the actual payment of the gratuity. Since the

learned Advocates for the parties pointed out that there is no fixed interest for delayed payment of gratuity, I find that it would be reasonable to order that such gratuity shall carry simple interest at the rate of 7% per annum to the extent of delay.

9. With respect to delay in releasing the commuted value of the pension I find that the petitioner cannot claim any interest thereon. The petitioner received full provisional pension without any cut, which he would have suffered, if he was allowed to commute the pension from the date of his retirement till his pension entitlement was finalized by the government. Thus, having received full pension till commutation was permitted, the claim of the petitioner for interest thereon is not justified.

10. With respect of fixation of the pension of the petitioner, I find *prima-facie* substance in the grievance made by the petitioner. If the penalty order dated 28.02.2000 is implemented while fixing the pension of the petitioner, in such a manner that the same has effect of withholding the increment of the petitioner with permanent effect, the pension fixation of the petitioner requires to be corrected. This may have bearing on payment of gratuity of the petitioner also. I have

expressed no final opinion on the subject. The petitioner is permitted to make a representation to the authorities detailing his contention for correction of his pension and for recalculating his gratuity. If the petitioner makes such a representation within a period of two weeks, the same shall be decided within a period of eight weeks from the date of its receipt.

11. In view of the above discussion, the petition is disposed of by giving following directions:

(1) The respondents shall pay to the petitioner simple interest at the rate of 7% per annum from 01.09.2000 (three months after the date of retirement of the petitioner) on the amount of gratuity (including provisional gratuity) paid to the petitioner till such amount was actually paid over;

(2) The petitioner is not held entitled to receive interest on the commuted value of the pension; and

(3) If the petitioner makes a representation within a period of two weeks from today for

recorrection of pension fixation and recalculating of his gratuity on the basis of implementation of the penalty order dated 28.02.2000, such representation shall be disposed of within a period of eight weeks from the date of its receipt.

12. With these directions, the petition is disposed of. Rule is made absolute to the limited extent. No order as to costs. Direct service permitted.

[Akil Kureshi, J.]

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